

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, JUDGE

DIVISION III

CACR06-707

March 14, 2007

STEPHANIE TYLER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[CR-05-1143]

HONORABLE C. DAVID BURNETT,
JUDGE

REVERSED and REMANDED

This case involves an appeal from district court to circuit court for trial *de novo* — — an area of procedural law that was recently and correctly identified by a member of this court in an unpublished opinion as a “procedural morass.”

Facts

It appears to be undisputed by all parties in this case that on December 30, 2005, appellant, Stephanie Tyler, was tried and found guilty in district court for the offenses of “failure to appear” (C-05-11865) and “no liability insurance” (C-05-499). Appellant took steps to appeal these convictions to circuit court. She filed in the circuit court on December 30, 2005, which was the same date as the district-court trial, a notice of appeal,

a certified copy of the “docket sheet” in Docket C-05-499, a certified copy of the “court disposition” in Docket C-05-11865, and an “official receipt,” showing a total of \$280 paid and referencing two different case numbers (CR2005-1143 for “Tyler” and CR2005-1144 for “Williams”). In addition, on January 3, 2006, appellant filed in circuit court an order to release, another docket sheet in C-05-11865, a criminal appeal bond, a bail bond, another copy of the order to release, and another docket sheet in C-05-499. On January 5, 2006, appellant filed in circuit court yet another copy of the bail bond, and the criminal appeal bond. The notice of appeal, although not required but filed December 30, 2005, and the two docket sheets filed both on December 30 and January 3 are the only documents filed in circuit court within thirty days of the appellant’s court appearance in district court bearing the file marks of the district court.

Although it is not included in the addendum, on March 6, 2006, the City filed its motion to dismiss appellant’s appeal to circuit court, contending that more than thirty days had passed “from the *date of the conviction*” and that the record of the district court proceedings had not been filed in circuit court. (Emphasis added.) Appellant filed her response on March 31, 2006. A certified “appeal transcript” in C-05-11865 (failure to appear) and also a certified “appeal transcript” in C-05-499 (no liability insurance) were separately filed on March 30, 2006, in circuit court, although it is not clear by whom they were filed. Further, exemplifying the procedural morass in which both the bench and the bar find themselves, the March 30 district-court clerk’s certification letter indicates that appellant entered a plea of *nolo contendere* to the offense of no liability insurance on

January 11, 2006 – – even though the parties in this case seem to be in agreement that appellant was tried and found guilty on both offenses in district court on December 30, 2005.

A hearing on the City’s motion to dismiss was held in circuit court on April 3, 2006. At the conclusion of the hearing, the trial court ruled that the appeal was untimely filed, that it was filed “more than 90 days *from the time of judgment* and that this court doesn’t have any jurisdiction beyond that.” (Emphasis added.) On April 4, 2006, the circuit court’s Order of Dismissal of Appeal and Remand to District Court was filed.

Paragraphs 3, 4, and 5 of that order state:

3. The Defendant was convicted in case number C-05-11865 in the District Court of West Memphis on December 30, 2005, and in case number C-05-499 on January 11, 2006.

4. The record of the proceedings of the District Court was not filed in the Circuit Court within thirty (30) days of the *date of the conviction* for either case.

5. Defendant has not filed a Rule 9(c) affidavit in the circuit court within thirty (30) days of the *date of conviction* for either case.

(Emphasis added.) We emphasize the language used by the court at the hearing and in its order because Rule 9 provides that the record-filing deadline is thirty days from the date of the entry of judgment, not from the date of conviction.

One problem for this court is that, on the record before us, it is not entirely clear when the district-court judgments were entered in these two cases because different documents indicate different dates. In the original docket sheet for C-05-499, filed by appellant in circuit court on December 30, 2005, the judgment date was shown as

“01/14/2005,” which would have preceded the trial date of December 30, 2005. In the original docket sheet for C-05-11865, also filed on December 30, 2005, the judgment date was left blank. A subsequent docket sheet for C-05-11865, which was filed on January 3, 2006, also leaves the judgment date blank; a subsequent docket sheet for C-05-499, which was also filed on January 3, 2006, continues to show the judgment date as “01/14/2005.” In the certified “appeal transcript” for docket C-05-11865 that was filed in circuit court on March 30, 2006, the judgment date on the docket sheet is shown as “12/30/2005.” In the certified “appeal transcript” for docket C-05-499 that was filed in circuit court on March 30, 2006, the docket sheet continues to show the judgment date as “01/14/2005.” By contrast, and as quoted previously, in paragraph 3 and 4 of the Order of Dismissal of Appeal and Remand to District Court, the circuit court states that appellant was convicted in case number C-05-11865 on December 30, 2005, and in case number C-05-499 on January 11, 2006. The circuit court order then states that the record of the district-court proceedings in those cases was not filed within thirty days of the *convictions* in either case.

Appellant argues four points of appeal:

- I. The circuit court erred in not ruling that the certified copies of the docket sheets from the West Memphis District Court were a record of the proceedings.
- II. The circuit court erred in ruling that appellant’s appeal from the West Memphis District Court to the Crittenden County Circuit Court was untimely and that it did not have jurisdiction in dismissing and remanding the case to the West Memphis District Court.

- III. The U.S. and Arkansas constitutions guarantee a criminal defendant the right of a jury trial and access to the circuit courts.
- IV. The equal protection clauses of the U.S. and Arkansas constitutions mandate that criminal defendants appealing from the district courts to the circuit courts be afforded the right to a belated appeal.

We find merit in appellant's first two points of appeal and reverse and remand this case to the circuit court.

- I. The circuit court erred in not ruling that the certified copies of the docket sheets from the West Memphis District Court were a record of the proceedings.

District Court Rule 9 governs appeals from district court to circuit court. In order for a circuit court to obtain jurisdiction, the appellant must comply with Rule 9. *McNabb v. State*, 367 Ark. 93, ____ S.W.3d ____ (2006). For purposes of this appeal, Rule 9 still applied to criminal appeals.¹ *Id.* Rule 9 is mandatory and jurisdictional; failure to comply with it mandates the circuit court's dismissal of the appeal. *Id.*

Rule 9 of the District Court Rules provides in pertinent part:

(a) *Time for Taking Appeal.* All appeals in civil cases from district courts to circuit court must be filed in the office of the clerk of the particular circuit court having jurisdiction of the appeal *within 30 days from the date of the entry of judgment.* The 30-day period is not extended by a motion for judgment notwithstanding the verdict, a motion for new trial, a motion to amend the court's findings of fact or to make additional findings, or any other motion to vacate, alter or amend the judgment.

¹Rule 36 of the Arkansas Rules of Criminal Procedure now addresses criminal appeals from district court to circuit court, but it did not become effective until June 1, 2006; therefore, it is not applicable in the instant case.

(b) *How Taken.* An appeal from a district court to the circuit court shall be taken by filing a record of the proceedings had in the district court. Neither a notice of appeal nor an order granting an appeal shall be required. *It shall be the duty of the clerk to prepare and certify such record when requested by the appellant and upon payment of any fees authorized by law therefor. The appellant shall have the responsibility of filing such record in the office of the circuit clerk.*

(Emphasis added.)

In appealing a case from the district court to the circuit court, the appellant must file with the clerk of the circuit court “a record of the proceedings had in the district court.” In *McNabb*, the supreme court examined and explained Rule 9's requirements as follows:

Rule 9 clearly requires that an appeal from district to circuit court shall be taken by filing a record of the proceedings; however, Rule 9 does not enumerate what constitutes a record of proceedings. Furthermore, this court has never expressly defined what constitutes a record of proceedings, but it has referenced what is sufficient to satisfy this requirement. In *J&M Mobile Homes*, 347 Ark. at 130-31, 60 S.W.3d at 484, we held that Rule 9 “requires the filing of a certified copy of the transcript of the lower court proceedings within thirty days in order for the circuit court to acquire jurisdiction over the appeal.” Additionally, ... we noted, in dicta, that the record for municipal courts can be the docket sheet. In yet another case ... we stated that, although filing was untimely, “[i]n this case, the necessary record would have included the information, the motion, and the judgment of the municipal court.” Lastly, the court of appeals, ... held that the filing of a notice of appeal and an appeal bond signed by the municipal judge could not serve as a replacement of the record. Consequently, based upon our review of prior case law and Rule 9 itself, we hold that to satisfy the Rule 9 “record of proceedings” requirement, the record of proceedings must, at a minimum, be (1) certified by the clerk of the particular district court in which the case originated, and (2) reflect all the proceedings, including all filed documents and motions, before the district court.

367 Ark. at 98, _____ S.W.3d at _____.

The supreme court, in *McNabb*, distinguished *Baldwin v. State*, 74 Ark. App. 69, 45 S.W.3d 412 (2001), as follows:

In *Baldwin*, the appellant filed a notice of appeal and an appeal bond signed by the municipal judge. There, the court of appeals rejected the appellant's argument that because the appeal bond contained the same information as the transcript, it was sufficient to satisfy the record of proceedings. The present case is distinguishable from *Baldwin* in two parts. First under Rule 9(b), it is the duty of the clerk to prepare and certify the record when requested by the appellant, and it is the appellant's duty to file the record. Here, Appellant paid for the record of proceedings from district court, received a certified copy of the docket sheet from the clerk, and timely filed it with the circuit court. On the other hand, in *Baldwin*, there was no evidence that the appellant requested and paid for a record from the clerk but rather the appellant simply filed an appeal bond. Thus, it was clear that the appellant in *Baldwin* did not satisfy the requirements of Rule 9(b) whereas, here, Appellant took the proper steps in obtaining a record of proceeding and filing her appeal.

Second, in *Baldwin*, the court of appeals held that, even if the appeal bond contained the same information as the transcript, it cannot serve as a replacement of the record. *Here, Appellant filed a certified copy of the docket sheet that she obtained from the clerk in order to take an appeal from district court to circuit court. The certified docket sheet contained all of the information relating to the district-court proceedings.* As such, the present case is clearly distinguishable from *Baldwin* and the circuit court erred in finding that the certified docket sheet was not a record of proceedings.

367 Ark. at 99-100, ____ S.W.3d at ____ (emphasis added).

Further, the *McNabb* decision gave guidance regarding the record of filings in district court necessary to perfect the *de novo* appeal to circuit court:

Lastly, we have recognized that for inferior courts, such as district courts, the usual record is the docket sheet. ... But, as stated above, the record of proceedings must reflect all the proceedings, including all filed documents and motions, before the district court. Thus, a charging instrument, if filed with the district court, should be part of the record of proceedings.

In this case, it is not clear whether a “charging instrument” was filed with the district court or whether the affidavit was just sworn before the district court judge in order to obtain the warrant. Specifically, none of these documents are marked as ever being filed with the court. Due to the absence of file marks, we hold the certified district court docket sheet, in this case, is sufficient to satisfy a “record of proceedings” under Rule 9(b). The certified district court docket sheet, which included the violation Appellant was charged with, the dates of the violation and arrest, Appellant’s plea, and the disposition of the case, obtained in compliance with, and pursuant to Rule 9(b), should be considered a record of proceedings sufficient to maintain an appeal from district court to circuit court. Thus, the circuit court erred in its interpretation of Rule 9(b), specifically its finding as to what constitutes a record of proceedings.

367 Ark. at 100-01, ____ S.W.3d at ____.

It should be noted that appellant does not make any sort of argument that *McNabb* does not apply because it was decided after the critical dates in the instant case. Rather, appellant contends that *McNabb* supports her position. We agree.

McNabb makes clear that the record of proceedings from the district court must contain all of the information relating to the district-court proceedings, including “all filed documents and motions, before the district court [and] [t]hus, a charging instrument, if filed with the district court, should be part of the record of proceedings.” *McNabb*, 367 Ark. at 100, ____ S.W.3d at ____.

The supreme court, in *McNabb*, reversed the circuit court’s finding that it had no jurisdiction because the supreme court concluded that the certified docket sheet contained all of the information relating to the district-court proceedings. That is, the fact that the charging instrument or the affidavit, bearing no file marks, was not included by the appellant did not affect his compliance with Rule 9.

Here, even though it seems clear that appellant did not pay the required fees in accordance with Rule 9, and the docket sheets that she originally filed do not seem to reflect all of the information relating to the district-court proceedings, we interpret *McNabb* to loosen rather than tighten the requirements of Rule 9. First, whether appellant initially paid the required fees or not, she was able to obtain from the district-court clerk certified copies of the docket sheets; second, she then filed them in circuit court even though the information contained therein was less than complete and at least to some degree inaccurate. In short, she filed in circuit court all that was available from district court at the time of filing. It is important to our analysis that there are no district-court file markings on any of the other documents that were eventually filed in circuit court.

While sketchy, the information contained in the docket sheets that were initially filed by appellant reflects the violations with which appellant was charged; the dates of the violations and her arrest; and the fines that she was assessed, which indicated that the disposition of her charges was a finding of guilt on both. Finally, even though the “judgment dates” are less than clear, the facts developed show that these cases were tried on December 30, 2005; that the certified docket sheets reflecting the fines were filed in circuit court respectively on December 30, 2005 and January 3, 2006; and that the notice of appeal to circuit court, bearing the district-court file marks, reflecting specifically that appellant was “sentenced on December 30, 2005 to one year in jail and fined \$1,000 for Failure to Appear and No Liability Insurance,” provide a sufficient basis under the facts of this case for determining the date of judgment entry.

McNabb instructs us that Rule 9 involves two duties: 1) “It shall be the duty of the clerk to prepare and certify such record when requested by the appellant and upon payment of any fees authorized by law therefor,” and 2) “[t]he appellant shall have the responsibility of filing such record in the office of the circuit clerk.” Rule 9. We find that appellant satisfied her duty of filing a sufficient record of the proceedings in circuit court.

II. Was the filing of the certified copy of the docket sheet from the West Memphis District Court with the Crittenden County Circuit Court within thirty (30) days of the entry of judgment in the West Memphis District Court a timely filed appeal under Rule 9(a) of the District Court Rules?

Under subsection (a) of Rule 9, an appeal from district court to circuit court, which, as discussed above, involves filing a “record of the proceedings had in the district court,” must be filed in the office of the clerk of the circuit court “within 30 days from the date of the entry of judgment.” A judgment “is entered in municipal court by entering the date and the amount of the judgment in the court’s docket.” *Murray v. State*, 344 Ark. 7, 10, 37 S.W.3d 641, 643 (2001). “The court shall timely enter in the docket the date and amount of the judgment” Rule 8(c) of the District Court Rules. “The term ‘docket’ is defined in *Black’s Law Dictionary* 495 (7th ed. 1999), as ‘[a] formal record in which a judge or court clerk briefly notes all the proceedings and filings in a court case[.]’” *Murray*, 344 Ark. at 10, 37 S.W.3d at 643. For a docket entry to be made in [district] court, it is not necessary that it be done in a docket book. *Id.* at 11, 37 S.W.3d at 644. In *Murray*, the disposition of the case and the penalty were written on the summons and then

signed and dated by the special judge. A docket entry occurred when the pertinent information was written on the summons by the special judge. *Id.*

The gist of appellant's argument under this second point builds upon her position in the first point, and she contends that "[t]he undisputed fact of the filing of the certified copies of the Docket Sheets within thirty (30) days of the judgment with the [circuit court clerk] and the said Docket Sheets, constituting "a record of the proceedings" in the [district court] mandate a reversal of the circuit court's decision." We agree.

While the date of entry of the judgment may not be as clear as we would like, it *was* clear that the record of the proceedings was timely filed in circuit court. It is not disputed by the parties that the district-court trial occurred on December 30, 2005. Judgment clearly could not have been entered prior to that date. Both sets of the certified docket sheets were filed by, at least, January 3, 2006, well within the thirty-day time limit. Our review of this and other recent cases reaffirms that legitimate attempts by appellants to appeal judgments from district court may be too easily thwarted by a procedural misstep; hence, our references to this "procedural morass."

In light of our resolution of appellant's first two points of appeal, we find it unnecessary to reach her remaining points of appeal.

Reversed and remanded.

MARSHALL and BAKER, JJ., agree.